ONTARIO MUNICIPAL BOARD

RULES OF PRACTICE AND PROCEDURE

(made under section 91 of the *Ontario Municipal Board Act* and section 25.1 of the *Statutory Powers Procedure Act*)

Issued: June 3, 2004

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There are Comments on some of the Rules, which further explain them or provide examples. These are written in italics. The Rules also have headings, for easier reading. Neither the headings nor the comments are part of the Rules.

GENERAL

1. Application: The Rules in Part I –General apply to all proceedings before the Ontario Municipal Board.

2. Definitions of terms in these Rules (unless the context requires that they have a different meaning);

"affidavit" means evidence provided in writing and made under oath or affirmation; *(There is an affidavit of service for a Notice of Motion set out in Rule 35. This provides a sample format for any affidavit required in these Rules or by a Board order.)*

"applicant" means a person who makes an appeal or application to the Board and includes a person requesting a matter to be referred to the Board and also a person added as a party applicant by the Board, but "appellant " may also be used where it applies;

"document" means written and visual material, and includes written and visual evidence in a hearing event;

"electronic hearing" means a hearing held by conference telephone or some other form of electronic technology allowing all the parties and participants to hear one another;

"file" means to send to the Secretary of the Board or to send to the proper authority for receiving appeals, and requires that the material is either deemed to be or has actually been received by the Board or authority;

"hearing event" means a procedure held by the Board at any stage of a proceeding, and includes a mediation, motion, prehearing conference, and hearing, whether these are held in the form of an oral hearing, electronic hearing or written hearing;

NOTE: holidays for municipalities may be different than those below. Check with local staff when filing appeals.

"holiday" means a Saturday or Sunday or other days that the Board offices are closed, such as the statutory holidays of New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday.

"mediation" means a meeting with the parties in which a person, usually a Member of the Board, acts as (1) a neutral third party in meeting separately with the parties and suggesting to each their likelihood of success; or (2) a facilitator in meeting with all the parties together and

identifying the interests of each and encouraging resolution of the matter, or (3) some combination of these methods;

"motion" means a request by a person that the Board make a decision or issue an order;

"moving party" means the person who makes the motion;

"oral hearing" means a hearing at which the parties or their counsel or representatives attend before the Board Member(s) in person;

"participant" is an individual, group or corporation who may not wish to participate fully throughout a hearing, but who wishes to make a statement to the Board at a time set for such statements; *(Note: Such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can.)*

"party" includes a person entitled by the governing statute to be a party, and also those persons whom the Board accepts as parties; who may participate fully in the hearing by such activities as exchanging documents, providing testimony, presenting and cross-examining witnesses, and making submissions to the Board;

*(NOTE: **Unincorporated groups must appeal and act through an individual representative. They cannot appeal in the name of the group, as the appeal will not be accepted.**)*

"person" includes a corporation, but does not include an unincorporated association of persons, except those permitted under subsection 1(2) of the *Statutory Powers Procedure Act (These are mainly employers' associations and trade unions authorised by statutes to be parties to decisions)*; and the heirs, executors, administrators or other legal representatives of a person;

"preliminary hearing" means those portions of a prehearing conference in which binding procedural or substantive decisions are made by the Board *(these usually are shown in the Board order which follows the conference)*;

"proceeding" means a matter before the Board;

"representative" means legal counsel, or an agent who is authorized in writing to represent a person in the proceedings;

"responding party" means a person, other than the Board Secretary, who is served with a notice of motion by the moving party;

"Rules of Civil Procedure" means the Rules in effect for the Superior Court of Justice;

"settlement conference" means a conversation held to attempt to resolve all or part of a matter by discussion or mediation, and includes any part of a prehearing conference in which such discussions take place;

"submission form" means a form provided by the Board for the filing of appeals, referrals or applications;

"visual evidence" means images intended to be introduced into evidence at a hearing event, and includes computer-generated images, photographs, maps, videos, plans, surveys, models and overlays;
"written evidence" means material intended to be introduced into evidence at a hearing event, and includes reports, letters, charts, graphs, books of account and information recorded or stored by means of any device;

"written hearing" means a proceeding in the nature of a hearing held by means of the exchange of documents whether in written form (hard copy) or by electronic means.

3. **Interpretation of the Rules** The general principle for application of these Rules is that they shall be liberally interpreted to ensure the just, most expeditious and least expensive determination of every proceeding on its merits.

Comment on Section 4 below: The Board may also follow the Rules of Civil Procedure for the courts where appropriate, and may order that these be modified. The Forms provided in the Rules of Civil Procedure may also be used for any matter other than those Planning Act and other matters where the Board has created a submission form (see Rule 14).

4. **Matters not dealt with in the Rules** If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on any matter before it.

5. **Technical objections** Substantial compliance with requirements of these rules is sufficient.

Comment on Rule 6 below: this is based on the provisions of subsection 4(1) of the Statutory Powers Procedure Act. This Act also applies to the Board's proceedings. Amendments to this Act came into force on February 15, 2000 [Schedule B of the Red Tape Reduction Act, 1999, S.O. 1999, c. 12]. These amendments are reflected in these Rules. By subsection 4(1), the parties must CONSENT before the Board can permit exceptions from procedural requirements in statutes or regulations. However, the Board may permit exceptions from ***these OMB Rules*** *without consent.* ***Note also that the Board will change these Rules or procedural orders only if it agrees that changes are essential.***

6. **Board may exempt from Rules** The Board may grant all necessary exceptions from these Rules or a procedural order, or other relief as it considers appropriate, to ensure that the real questions in issue are determined in a just manner.
(Note, however, about dates for filing/delivering of documents: ***appeals must be filed on time.*** *If a party files evidence or other material after the required date, the Board may decide to disregard it.)*

7. **Failure to comply with Rules** The Board expects that these Rules and Board orders will be met. If a party has not complied with a requirement of these Rules or of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.
(Note that some provisions of the Planning Act and other legislation permit the Board to dismiss a matter without holding a hearing, if certain defects can be proved.)

REPRESENTATIVES

8. Appearance in Person or by Authorized Representative A party may attend a proceeding in person or by a representative. Representatives who are not legal counsel must file a written confirmation of authorization to act for the party. If authorization changes, the party and the representative shall immediately notify the Board and the other parties.

9. Notices of Proceedings Provided to Representatives Any notice given to a representative is deemed to have been given to the party for whom the representative acts.

TIME

Comments on Time Requirements (Rules 10 to 12 below):
Note that time limits in legislation may provide for different rules than these Rules. ***The Board cannot extend a time given in a statute, such as the Planning Act. Therefore applications or appeals which begin a proceeding at the Board must be filed with the correct body (such as the Clerk or the Secretary-Treasurer – the Notice of Decision will usually state this) at the latest on the day established in the appeal section of the applicable legislation as the last day for appealing.***

Here is an example of how the Board would compute an appeal period of, for example, twenty (20) days. (This method of counting is based on the Rules of Civil Procedure.) The Board would consider the day after the required notice is given as ***day one****. The following days, including Saturdays, Sundays and holidays would be counted, up to the 20th day. Documents should be filed or delivered by the close of business* ***(4:30 p.m.)*** *on the 20th day. Where this day falls on a Saturday, Sunday or holiday, they should be filed by* ***4:30 p.m.*** *on the next day that is not a Saturday, Sunday or holiday. Most municipalities are open to 4:30 p.m. The Rules of Civil Procedure deem service (delivery)on a lawyer* ***BY FAX*** *made* ***after 5:00 p.m.*** *to be made on the next day. However, Rule 27 of these Rules deems a fax to be served on anyone on the next BUSINESS day.* ***Please note that no matter what the legal rule may be for the time that a day ends, it is advisable to file or serve documents within office hours to ensure receipt on the required day.***

10. Time: Time is computed **under these Rules or in a Board order** under the Rules of Civil Procedure, unless it is stated to be computed differently.

11. Extension or Reduction of Time The Board may extend or reduce any time required **in these Rules or in a Board order**, with any terms or conditions. A request for a change in time requirements may be made by bringing a motion, or the Board may change a time requirement on its own initiative, with or without a hearing, either before or after the time period expires. Time for serving *(delivering)* a document or other evidence may also be extended or reduced if all those who must be served consent to this in writing.

12. No Proceeding for Period if Party is Absent The Board will not proceed for at least 30 minutes after the time given for the commencement of an oral hearing if an opposite party or a representative has not yet appeared, unless they have given notice that they will not attend at that time. If an electronic hearing, the Board or the party directed to contact the parties will attempt to link all parties not so linked until 15 minutes after the time given for the commencement.

INITIATING PROCEEDINGS

Comment on Initiating Proceedings (Rules 13-15 below):
Please note that appeals must be filed with the proper authority as set out in the applicable legislation and in notices from the municipality. If an appeal is sent to the Board at the last moment when it should have been sent to the Clerk or the Committee Secretary-Treasurer, the Board ***cannot accept it as a valid appeal.***

13. **Form of Application, Appeal or Referral** Unless any Act or these Rules provide for other methods *(such as submission forms - Rule 14, or a motion - Rule 34)*, or the Board otherwise directs, when matters are initiated by filing an application, appeal or referral directly with the Board, the application, appeal or referral must be in writing and must:
(a) be addressed to the Board Secretary;
(b) provide the applicant's name, telephone, fax and e-mail address (if any), address and postal code;
(c) state the nature of the matter, the reasons for it, and the order requested;
(d) include the appropriate fee; and
(e) inform the Board of a request to provide a bilingual Member if the applicant wishes the proceeding to be conducted wholly or partly in French; and
(f) be signed by the applicant or their representative.

14. **Exceptions to Rule 13** Where a matter is appealed or referred or application is made under the *Planning Act* or other Act, and the Board has prepared a submission form, a **submission form** should be obtained *(free of charge from the Board Secretary)*, completed and filed with the Board. Any necessary changes may be made to these submission forms. Where there is no form, the forms prescribed by the Rules of Civil Procedure may be used with necessary changes.

Examples of these forms are: appeals concerning official plans and amendments, zoning by-laws, demolition permits, minor variances, subdivisions, consents, site plan referrals, development charges and education development charges. For details, see the current list of forms in the Attachments to these Rules, and on the Board's website at www.omb.gov.on.ca.

15. **Where No Fee Paid** Unless the Board directs otherwise, the Board will not consider a matter or schedule a hearing event unless the appropriate fee has been paid.

NOTICES

16. **Notices** Any notices required by these Rules or a Board order shall be given in writing, unless directed otherwise.

17. Notice of Hearing or Other Proceeding

Comments on Notice and Notice Periods (Rules 17, 17.01 and 17.02 (Effective March 1, 2003)

The Notice Periods set out in Rule 17.01 are those that the Board will, ordinarily, direct. The Board, however, does have the authority set out in Rule 11 to extend or reduce (abridge) any time required in these Rules or in an Order of the Board.

17. Notice of Hearing or Other Proceeding The Board may direct a party to give notice of a hearing event or other proceeding to any person or class of persons, and may direct the method of providing the notice. An affidavit must be filed within fourteen days after notice is given to prove that notice was properly given (*See Rules 34 to 39 on Motions*).

17.01. Notice Periods Unless the Board directs otherwise, the party or parties listed below shall give notice of a hearing event to any person or class of persons as directed by the Board in respect of a particular application in accordance with the notice periods set out in the following table:

PROVISION UNDER THE PLANNING ACT	PART I - NOTICE PERIOD REQUIRED BY THE BOARD	PART II - BY WHOM THE NOTICE IS SERVED
Official Plans - Subsections 17(24), (36) and (40)	35 days	Municipality
Amendments to Official Plans - Subsection 22(7)	60 days	Applicant
Amendment to Zoning By-law – refusal or neglect – Subsection 34(11)	60 days	Applicant
Zoning By-law – Subsection 34(19)	35 days	Municipality
Holding By-law passed by Municipality and appealed	35 days	Municipality
Holding By-law where municipality refuses or neglects to remove the "H" (subsection 36 (3))	60 days	Applicant
Interim Control By-law – Subsection 38(4)	35 days	Municipality

PROVISION UNDER THE PLANNING ACT	PART III - NOTICE PERIOD REQUIRED BY THE BOARD	PART IV - BY WHOM THE NOTICE IS SERVED
Plan of Subdivision – Failure to decide - Subsection 51(34)	60 days	Applicant
Conditions for Approval of Draft Plan of Subdivision – Subsection 51(43)	35 days	Applicant
Plan of Subdivision – Approval or refusal & changed conditions – Subsections 51(39) and (48)	35 days	Municipality
First Prehearing Conferences in respect of any matter	35 days	As above

17.02. **Notice Issued by the Board** Unless the Board orders otherwise, the Board will provide notice of a hearing event in respect of any proceeding not mentioned in Rule 17.01.

DOCUMENTS, EXHIBITS, FILING, SERVICE

18. **Form of Documents** Unless otherwise directed by the Board, every document filed or introduced by a party or participant in a proceeding shall be prepared on letter size paper (8 ½" x 11") (except for large documents such as plans or surveys), and shall have each page numbered consecutively throughout the entire text and graphic content, even if there are dividers or tabs.

19. **Other Exhibits** Large graphic or other such types of visual evidence should not be glued to foam or other boards. It must be on paper and **be removed from the boards** following the hearing event, and folded to 8 ½" x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. A videotape to be used in evidence must be viewed by the other identified parties before the hearing.

20. **Copies of Documents for Parties and Clerk** Subject to the Board making a different order at a prehearing conference, a party who will use a document as evidence at a hearing event should provide copies at the beginning of the proceeding for all parties and participants. If it is an official plan, those **parts** of the Plan to be used should be distributed to the parties and participants, but a copy of the entire plan must be made available to the Board Member(s) at the beginning of the proceeding. If the Board orders that copies of documents be kept by the clerk of the municipality, they do not need to be certified copies, unless a party objects that they are not authentic copies.

21. **Prefiling of Witness Statement and Reports Experts:** If a hearing is expected to last more than 10 days, the Board **may** require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality, any experts' witness statements and reports prepared for the hearing at least 30 days in advance of the hearing, or as the Board directs. The Board may also make this order for hearings expected to last less than 10 days if a party requests this. The expert witness statement must contain:
(a) the expert's name, address and qualifications;
(b) the issues the expert will address, opinions on these issues and the reason for the opinions; and
(c) a list of the reports, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement, if it contains the required information.

An expert may not be permitted to testify if this statement or report is not filed. The reports in (c) above do not need to be filed with the Board, but should be supplied to the parties in advance if the parties request them. Participants in the hearing wishing to examine expert reports may do so at the Clerk's office.

Other Witnesses: The Board may also require that a witness who is not giving expert evidence, or a participant, provide to the Board and the parties a witness or participant statement. A witness or participant statement should contain a short written outline of the person's background, experience and interest in the matter; a list of the issues which they will discuss and an opinion on those issues; and a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The witness or participant may not be allowed to testify if this statement is not filed.

22. **Amendment of Documents** Documents filed with the Board cannot be amended unless the Board orders it, or the other parties consent. The Board may require that the person requesting an amendment do so by way of a motion under Rule 34 with notice to all parties.

23. **Copies of Board Documents** A person may examine any document filed with the Board, and copy it after paying the Board's fee, unless an Act or a court or Board order provides otherwise. *(This does not apply to documents that the Board has ordered to be confidential, sealed, and not part of the public record.)*

24. **Return of Exhibits** Exhibits *(written or visual evidence)* of all types introduced at a hearing will be kept for 60 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, it becomes the property of the Board and may be archived.

25. **Final Approval of Plans of Subdivision** When a final plan is prepared for the Board's approval *(rather than the approval authority's, if the Board orders that it be final approved by the authority)*, the owner shall insert on the original plan and copies the following wording:

This plan is approved by the Ontario Municipal Board under file [insert OMB case number] pursuant to the *Planning Act*, section _____.

_____

Date Secretary, Ontario Municipal Board

Comment on Faxes (Rules 26 to 31 below):
The Rules below respecting faxes apply to all documents filed or served, including notices of appeal, notices of motion, notices of hearing and documents exchanged following a procedural order.
Note, however, that the Board cannot extend an appeal period in an Act, so that documents must be served on or before the last day. *These Rules merely require that documents be faxed by specific times. For example, staff will be present to receive a fax if it is faxed* ***before 4:30 p.m.*** *(See also Comments and Rules 10 to 12 respecting time.)*

26. Service by Fax Where any document is required to be served *(delivered)* or filed, including one commencing a proceeding or a motion, or providing notice, it may be served by fax (unless an Act, or the Board, requires another method of service) and shall be sent to,
(a) the party's representative, if any;
(b) where the party is an individual and is not represented by a representative, to that party directly where that party has provided a fax number;
(c) where that party is a corporation and is not represented by a representative, to the corporation directly to the attention of an individual with apparent authority to receive the document; or
(d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, an individual with apparent authority to receive the document.

27. If Faxed After 4:30 p.m. Any document served by fax after 4:30 p.m. is deemed to have been served on the next **business** day.

28. Permission to Fax if More Than 12 Pages If a document is more than 12 pages including the cover page, it must not be served by fax between 8:00 a.m. and 4.30 p.m. unless the person receiving the document has given permission in advance. If more than 30 pages, it cannot be served by fax at any time without advance permission.

29. Contents of Cover Page The fax cover page must include the Board's case and file number, the type of matter and the municipality in which the matter arose, as well as full identification of the sender and receiver.

30. Proof of Service by Fax A confirmation printout received by the sender is proof of the full transmission and receipt of the fax.

31. No Hard Copy Needed A hard copy of a faxed document must not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

DISCOVERY

32. Order for Discovery The Board may grant an order for discovery where needed in order for a party to obtain necessary information from another party. This will only be granted where the party has requested information and it has been refused, or no answer was received. This order must be requested by notice of motion *(see Rule 34 for the Notice of Motion)*, together with an affidavit which sets out the efforts made to obtain the desired information, and the reasons why it is needed. The Board may order,

(a) any person *(usually only a party)* to provide an affidavit containing a list of relevant documents which that person possesses;
(b) the delivery of documents;
(c) an oral examination or cross examination of any person or party;
(d) an examination for discovery by written questions;
(e) the inspection and testing of property;
(f) the examination of a witness before the commencement of a proceeding (under the Rules of Civil Procedure); or
(g) any other form of discovery;

and the Board may impose conditions concerning the timing and scope of discovery.

(No motion is required for matters under the Expropriations Act, where parties have an automatic right to discovery.)

33. Rules of Civil Procedure Apply to Proceedings Following Order for Discovery If an order for discovery is obtained under Rule 32, or in an expropriation proceeding, the Rules of Civil Procedure concerning discovery apply to Board proceedings unless the Board orders otherwise.

MOTIONS

Comments on Motions (Rules 34 to 39 below):
Motions (requests to the Board for an order) are usually held in person. However, if there have been four or fewer parties identified before the hearing, and it is expected that the motion will last less than one hour, the Board may hold a motion by telephone conference call. The Board may refuse to hear, may adjourn, dismiss or hear only part of a telephone motion if it finds that persons have not been notified of it; if the nature of the evidence requires an in-person hearing; if it will in the Board's view exceed one hour; or for any other valid reason.

34. Date for Motion and Notice of Motion A person making a motion before a hearing event begins must first obtain from Board staff a hearing date, if an oral or electronic motion, or the Board may decide to hold a motion by written hearing. Once a date or agreement for a written hearing is obtained, a notice of motion must be provided to the other parties. (*See Rule 35 for the time for delivery of this notice.)* The notice of motion must be filed together with an affidavit setting out a clear and brief statement of the facts, by a person with either first-hand knowledge or information and belief about the facts.

This is a form for a Notice of Motion:

ONTARIO MUNICIPAL BOARD

In the matter of section.....of the .....Act.
(state the section number and the legislation under which the matter has been appealed.)
and
In the matter of *(state the nature of the application, appeal, motion, etc.)*

NOTICE OF MOTION

OMB Case No:

The *(name and address, phone and fax numbers and e-mail address (if any) of the person or party bringing the motion)* **will make a motion to the Board on** *(day)* **at** *(time)* **at** *(location of hearing)*. **The estimated time required is .... hours.** *(or:* **has been granted a request for a motion by written hearing. The date for responding is** (date).

The motion is for *(state the decision or order desired).*

The grounds for the motion are *(specify the reasons for the request, including sections of statutes, regulations or rules that will be referred to).*

The following documents will be used [at the hearing of the motion]: *(list the affidavit(s) and any other documents to be relied on and attach a copy of them to the Notice of Motion when filed or served).*

(Optional) **I (we) intend to request permission to introduce oral evidence** *(describe the nature of the evidence and state who will provide it)* **at the motion hearing**.

The next clause may be inserted if the Board directs it. If the motion is to dismiss an appeal without holding a hearing, the Board will notify the moving party of the procedure that will follow the motion, if it is not granted:

(Insert if Board directs) **If the motion is not granted, the hearing will (follow immediately) (be held at a later date).**

Name, mailing and e-mail (if any)
address, and telephone and fax (if any)
numbers of the moving party or the moving party's representative

To: Names and addresses of responding party or representative, and all of the persons to whom the Board requires notice of the motion be given

(the Board staff will usually provide these)

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35. Serving the Notice of Motion Unless the Board agrees to a lesser time, the notice of motion and all supporting documents must be served *(delivered)*at least 10 days before the date for the hearing of the motion, if heard in person or by telephone conference call. If the Board approves a written motion, the Board will notify the applicant and the other parties. The applicant must serve a notice of written motion within 15 days of this notice. The other parties wishing to respond must serve a response *(see Rule 36)* within 10 days of the date of the applicant's notice of written motion. A notice of motion must be served on all parties, any other person directed by the Board, and the Board Secretary. An affidavit stating that this was done must be filed with the Board before or at the hearing of the motion, if an oral motion, or within 20 days of the date of the notice of motion if a written motion.

This is a form for an Affidavit:

AFFIDAVIT OF SERVICE

OMB Case No:

I, *(full name of person swearing or affirming)*, **of the (City, Town, etc. of ......, in the (County, Regional Municipality, etc.) of** ....., ...*(state the person's capacity, if any, e.g. party, solicitor, representative, officer, member or employee of a party, etc.)* **MAKE OATH AND SAY (***or* **AFFIRM AND SAY):**

Notice of the [written] hearing of this matter at ...[.....*(place)* **commencing at** ..... **a.m./p.m. on** ..... **day, the** ..... **day of** ....., ...(year)**] was given in the following manner:**

(any or all of the following, as relevant:)

-by publication in the *(name newspaper or newspapers of general circulation in the affected area)* **on the** ..... **day of** ....., ...*(year), (and further insertions as the case may be).* **A copy of the published notice is attached as Attachment** .....

-by delivering notice by prepaid registered *(certified)* **mail** *(prepaid courier) (fax)* **on** ..... **day of** ....., *(year)*..... **to** *(name the persons to whom mailed or sent, or if more than 2, refer to a list attached* **- The list of persons to whom such notice was mailed** *(faxed, delivered by courier)* **is attached to this Affidavit as Attachment**.....**)**

-by posting copies of such notice in the form attached as Attachment ..... **in public places in the municipality including the following** *(name the places where the notice was posted)* **on the** ..... **day of** ....., *(year)* **until the** ..... **day of** ....., ...*(year).*

-by *(describe any other means of service used, including personal service, as may have been directed by the Board in giving instructions for service).*

Service of notice of the hearing in this matter is in accordance with the instructions given by the Board in its letter dated ....., ...*(year).*

The persons to whom notice has been given include the present parties, any appellant, objector, person who requested in writing that notice be given *(as well as those persons within an area defined by the Board in its instructions for service as being entitled to notice).*

This affidavit has been sworn by me in good faith and in support of.....*(matter)* **.... under** *(legislation)* **and for no improper purpose.**

Sworn *(or Affirmed)* **before me at**
the (City, Town, etc.) of .....
in the (County, Regional Municipality, etc.)
of....., on (date).

_____
(Signature of Person affirming Affidavit)

_____
Commissioner for Taking Affidavits
(or as may be)

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36. **Notice by Responding Party** A responding party must serve a notice of response if that party intends,

(a) to rely on any grounds *(reasons)* or documents not provided by the moving party;
(b) to use an affidavit as evidence (in this case the affidavit, setting out a clear and brief statement of the facts, by a person with either first-hand knowledge or information and belief about the facts, must be attached to the notice of response); or
(c) to request permission for oral evidence by a witness at an oral hearing;

and if a written hearing, must notify the Board and the other parties if it does not intend to serve a notice of response.

This is a form for the Notice of Response to Motion:

ONTARIO MUNICIPAL BOARD

OMB Case No....

In the matter of section.....of the .....Act. *(state the section number and the legislation under which the matter has been appealed.)*
and
In the matter of *(state the nature of the application, appeal, motion, etc.)*

NOTICE OF RESPONSE TO MOTION

I/We/The *(name and address, phone and fax numbers and e-mail address (if any) of the person responding to the motion)* **will make a response to the motion [to be made to the Board by** *(person making the motion)* **on** *(day)* **at** *(time)* **at** *(location of hearing)]* *(or if written hearing)* **and attach a response to the motion made by** *(person making the motion)*

The grounds to be relied on in response to the motion are *(specify the reasons, other than those given by the moving party, including any sections of statutes, regulations or rules that will be referred to).*

The following documents, in addition to evidence introduced by the moving party, will be used at the hearing of the motion [*(if written)* **are relied on]** *(list the affidavit(s) and any other documents to be relied on, and attach a copy of them to the Notice of Response to Motion when filed or served.)*

(Optional) **I (we) intend to request permission to introduce oral evidence** *(describe the nature of the evidence and state who will provide it)* **at the motion hearing.**

Name, mailing and e-mail (if any)
address, and telephone and fax (if any)
numbers of the responding party or the party's representative

To: Names and addresses of moving party
or representative, and all of the persons who received
notice of the motion

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37. **Service of the Notice of Response for an Oral Hearing** Unless the Board agrees to a lesser time, the notice of response shall be served at least 2 days before the hearing of the motion; and shall be served on all parties, any other person directed by the Board and the Board Secretary. An affidavit stating that this was done shall be filed with the Board before or at the hearing of the motion. *(For a form for this affidavit, see Rule 35.)*

38. **Oral Submissions** A party bringing a motion and those responding to it may make oral submissions or argument at the hearing of a motion by oral or electronic hearing.

Comment on Motions at Oral Hearings - Rule 39 below:
Parties frequently make motions without notice at the commencement of oral hearings. The Board discourages this practice, and prefers that parties receive advance warning of motions wherever possible. Therefore it will only hear motions during hearings, without proper notice, where the reason for the motion has arisen out of events or evidence after the hearing has commenced.

39. **Motions made at Oral Hearings** A motion may be made at an oral hearing only if the need for the motion arises out of events in the hearing. The motion will be heard or decided in accordance with any procedures ordered by the presiding Member. If the moving party is aware of the need for a motion before the hearing, the party should serve a notice of motion under Rule 34 and request that the Board reduce the time required in that Rule for service of the notice, if necessary.

SETTLEMENT BEFORE BOARD PROCEEDINGS

40. **Procedure if Settlement before Board Hearing Event** Where the parties reach a settlement before any hearing event is held, the Board may hold a hearing into the terms of the settlement. If all statutory requirements and the public interest are satisfied, the Board may issue an order approving the settlement, with any necessary amendments.

COMPELLING ATTENDANCE OF WITNESSES BY SUMMONS

41. **Summons Form from Board** A party who wishes to require a witness in Ontario to attend an oral or electronic hearing may serve a summons in a form available from the Board Secretary, for the fee set by the Board. The party should obtain a request for summons form from the Board Information Office, and return the completed form. The summons will be signed and issued by the Board Secretary. However, the Board may refuse to issue a summons unless an affidavit is provided indicating how the witness' evidence is relevant to the matter. If the Board is not satisfied from the affidavit that the evidence is relevant, it will hold a motion to determine this question. It may cancel a summons for valid reasons. Board Members may also issue a summons without the witness' name in urgent cases. The party or representative must then complete the form and insert the name(s) of the witnesses required. A summons is valid even without the Board's seal.

(A summons may be refused if, after hearing a motion, the Board decides that the witness' testimony is not material to the matter, or admissible in evidence at a hearing. Once issued, the summons will require the witness to attend the hearing at a time and place stated in the summons, or as arranged with the person issuing the summons, and may require the witness to bring relevant documents and other things stated in the summons).

42. **Serving the Summons** A summons must be served on *(handed to)* the witness personally at least 5 days before the time for attendance. At the same time, the attendance money that is paid for attendance before the Superior Court of Justice shall be paid or tendered to the witness.

LANGUAGE OF PROCEEDINGS

43. **Use of English and French** The Board may conduct proceedings in English or French or partly in English and partly in French.

44. **Where French is Used** A person who wishes a proceeding to be conducted wholly or partly in French or who wishes to give evidence or make submissions in French must request that the Board provide a bilingual Member at least 25 days before the hearing event.

45. **Documents in English or French** Where written evidence or a submission is provided in either English or French, the Board may order that the person also provide it in the other language if the Board considers it necessary for the fair determination of the matter.

46. **Where Interpreter is Required** If an interpreter is required for a witness whose language is not English or French, the party calling the witness must provide the interpreter.

SCREENING

Comments on Screening (Rules 47 to 53 below):
Screening of matters by the Board can be administrative (by staff) and/or adjudicative (by Board Members). Administrative screening is the process in which the staff may decide not to process the documents received because the information submitted is not complete, until the technical defect is corrected.

Adjudicative screening is the process for dismissing a matter without a full hearing. It is based on criteria that are set out in the governing legislation.

For example, section 37.1 of the Ontario Municipal Board Act, which applies to all Board proceedings, permits the Board to dismiss a matter for failure to pay fees or respond to a Board request for information. This can occur only after a warning and an opportunity to respond. In addition, certain sections of the Planning Act allow for adjudicative screening by Members before a full hearing is held.

47. **Administrative Screening** Staff conduct administrative screening of matters submitted to the Board to determine whether,
(a) the required fees have been paid;
(b) written reasons have been given in the document submitted;
(c) the document has been signed by the applicant or their representative;
(d) the applicant has responded to a request for further information within the time specified by the Board; and
(e) the document submitted has been filed within the statutory deadline.

Staff will stop processing a matter if the information submitted is not complete. Once the information is considered complete according to the Board's established requirements, staff continue to process it (subject to Rule 48). Discretionary judgments and legal interpretations are referred to a Board Member.

(NOTE that neither Board staff nor Members can accept an appeal after the appeal deadline in the governing legislation.)

48. **Notice before Dismissal** Before dismissing an incomplete application under Rule 47, the Board will notify the applicant and provide an opportunity to respond within the time provided. If no response is received in that time, the Board may dismiss the application.

49. **Board May Dispense with Requirement** At the request of the applicant, the Board may cancel a request for further information where it is satisfied that there is good reason to do so.

50. **Applicant to Serve Additional Materials Requested** If the information submitted to the Board was provided to the other parties before the Board notifies the applicant that the information is incomplete, the applicant shall provide a copy of the further information required to all other parties as well as to the Board.

51. **Completed Matter Deemed Filed on Original Date** If the defect set out in a notice sent out under Rule 48 is resolved within the time stated in the Board's letter, the matter is deemed to have been properly filed on the day it was first received, rather than the day the further required information was received.

52. **Adjudicative Screening by Board Member** A Board Member may screen matters and may dismiss them without holding a hearing event, or after hearing a motion,
(a) if satisfied that the Board is without jurisdiction to hear the application; or
(b) in official plan or zoning by-law, minor variance, subdivision and consent appeals, or referrals of the Minister's decision on an application to revoke or amend a Minister's Zoning Order, the Board is of the opinion that,

(i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which all or part of the appeal could be allowed;
(ii) the appeal is not made in good faith, is frivolous or vexatious, or is only for the purpose of delay; or
(iii) the appellant did not make oral submissions at a public meeting, or provide written submissions before the decision of Council or Committee, without a reasonable explanation.

53. **Notice before Dismissal** Before dismissing a matter for the reasons in Rule 52, the Board will notify the applicant and provide the applicant with an opportunity to respond within the time provided. If no response is received in that time, the application will be dismissed without a hearing.

STREAMING

Comments on Streaming (Rules 54 to 60 below):
The Board assigns a matter to the stream (process) which in its opinion will resolve the matter quickly and at the least cost, while maintaining fairness. There are several streams, which can be such procedures as prehearing conferences and consensual dispute resolution, as well as adjudication. These can also take several forms.

Streams are not the same as scheduling priorities. The Board has identified certain urgent circumstances in which a matter is scheduled ahead of other cases, regardless of the particular stream being used. Urgent cases are usually scheduled to a fixed date, with adjournments (change of dates) permitted only in exceptional circumstances.

In choosing the appropriate stream(s), the Board will consider any factor it considers relevant, including: nature of the dispute; novelty of the issues; complexity of the issues, facts and evidence; complexity and quality of the documents; likelihood of settlement; number of parties and participants involved; likely number of witnesses and/or expert witnesses; number of procedural steps that may be needed to focus the issues and expedite resolution; estimated duration of the hearing; remedies requested; parties' preferences for a particular stream; and potential for any jurisdictional or constitutional challenges.

54. **Types of Streams** The Board may schedule a mediation session, a motion to dismiss without a hearing, a prehearing conference, a standard or complex hearing or one combining several appeals (or other procedures and processes), and may also combine any of the streams when appropriate, or redirect a matter into a different stream. A prehearing conference may include some attempt at mediation by means of a settlement conference, and also a preliminary hearing of some of the issues *(see definitions in Rule 2)*.

55. **Type of Hearing Event** A standard hearing event will be scheduled when there are few issues and/or parties, and time estimates are from ½ day to 10 days. There may or may not be a prehearing conference. Matters are considered to be complex if they are estimated to require over two weeks' hearing time, to involve many or complicated matters and parties or witnesses, and are to be preceded by one or more prehearing conferences.
There are special rules for assessment and expropriation matters (see below, Parts II and III).

56. Parties may Request Stream Before any hearing event is held, the parties may make a request that the matter be directed to one or more specific streams.

Comment on Combining Proceedings (Rule 57 below): *Please note that even when the majority of the Board's former Rules of Procedure, O. Reg. 889 are revoked, Rule 7 of these Rules will remain in force. It allows the Board to consolidate without the consent of the parties. This will mean that the requirement in section 9.1(1) of the Statutory Powers Procedure Act for such consent will not apply [because of the exception in subsection 9.1(4)], and the Board can order consolidation when desired. It is similar to Rules 57 and 58 below.*
Rule 7 states:

> **Rule 7 CONSOLIDATION OR HEARING TOGETHER**
>
> **7.01** **Where the Board considers that two or more matters are related to each other b common facts, issues, questions of law or for any other reason, the Board may,**
>
> (a) **order the matters to be consolidated, heard at the same time or heard one immediately after the other; or**
>
> (b) **stay or adjourn any matter until the determination of any other matter.**
>
> **7.02** **Where the Board has made an order that proceedings be heard either at the same time or one immediately after the other, the Board panel at the hearing, nevertheless, has discretion to order otherwise.**

If a party asks for consolidation of two or more planning files involving ***two separate properties****, they should include with the request a brief planning history of the properties.*

57. Combining Proceedings or Hearing Matters Together When the Board considers that two or more matters are related to each other by common facts, issues, questions of law or for any other reason, the Board may order that the matters be consolidated, heard at the same time, or heard one after the other; or stay or adjourn any matter until the determination of any other matter.

58. Effect of Consolidating Proceedings When two or more proceedings are consolidated,
(a) statutory procedural requirements for any of the original separate proceedings apply, where appropriate, to the consolidated proceeding;
(b) parties to each of the original separate proceedings are parties to the consolidated proceeding; and
(c) evidence to be presented in each of the separate proceedings is evidence in the consolidated proceeding.

59. Effect of hearing matters together Where two or more proceedings are heard together but not consolidated,
(a) statutory requirements for each proceeding apply only to that particular proceeding and not to the others;
(b) parties to the hearing are parties to their individual proceedings only and not parties to the other proceedings; and

(c) unless otherwise ordered by the Board, evidence in the hearing is evidence in each proceeding to which it could apply.

60. **Board May Reverse Decision for Consolidated or Other Proceedings** The Board may separate consolidated proceedings or matters heard together at any time that in its opinion the proceedings have become unduly complicated, delayed or repetitive, or a party is unduly prejudiced.

ADJOURNMENTS

Comments on Adjournments of Proceedings (Rules 61 to 65 below):
The Board will not often grant adjournments (later dates) for hearings or other proceedings. Parties and the Board spend time and money in giving notice, preparing and travelling for hearing events, and this is wasted if they are cancelled at the last minute. If the request is presented at the last moment, the Board may refuse the adjournment and proceed with the hearing. If, on the other hand, settlement discussions are reasonably nearing completion, the Board may agree to a delay. The main consideration is whether an adjournment is necessary to permit a fair hearing, versus the cost of any delay for all parties. Hiring a lawyer or planner shortly before a hearing, for example, is not a reason for an adjournment.

Parties should prepare for a hearing shortly after the appeal is submitted. They should not wait until notice of hearing is sent. *Performance standards required for tribunals mean that the Board is setting hearing dates earlier than in the past.*

If a matter is adjourned, the Board will pick a new date for it to proceed unless there is a good reason to leave it undecided (e.g. it is dependent upon a decision of a court).

61. **Hearing Dates Fixed** Hearing events will take place on the date set unless the Board agrees to an adjournment *(later date)*.

62. **Requests for Adjournment if All Parties Consent** If all of the parties agree, they may make a written request to postpone a hearing event. The request must include the reasons, a suggested new date and the signed consents of all parties. However, the Board may require that the parties attend in person to argue for an adjournment, even if all of the parties consent.

63. **Requests for Adjournment Without Consent** If a party consulted objects to an adjournment request, the party requesting the adjournment must bring a motion under Rule 34 at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before *(see Rule 64)*, the party must give notice of the request to the Board and to the other parties, and serve their motion materials as soon as possible. If the Board refuses to consider a request made late, any motion for adjournment must be made in person at the beginning of the hearing event.

64. **Emergencies Only** The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

65. Powers of the Board upon Adjournment Request The Board may,
(a) grant the request;
(b) grant the request and fix a new date; or where appropriate, the Board will schedule a prehearing conference about the status of the matter;
(c) grant a shorter adjournment than requested;
(d) deny the request, even if all parties have consented;
(e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
(f) grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable, and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
(g) convert the scheduled date to a mediation or prehearing conference; or
(h) make any other appropriate order.

MEDIATION *(Effective September 15, 2003)*

Comments on the Mediation Process (Rules 66 to 72 below):

Mediation is a form of consensual dispute resolution, in which parties meet with a Board Member (or someone appointed by the Board) who acts as a mediator, rather than as an adjudicator.

At a mediation, those present will try to settle the matters in dispute themselves, to avoid the necessity of a formal, and possibly lengthy and expensive adjudication process. The Board Member will act as a neutral third party and attempt to facilitate the resolution of the issues by the parties and may identify the interests of the parties and assist the parties in exploring possible ways of settling the matters in issue.

A mediation can be scheduled either at the request of the Board or at the request of any party. The Board may refuse requests for mediation if the Board is of the view that the mediation is not warranted, has no possibility of success, or is requested only for the purpose of delay.

Mediation of a dispute can have many benefits, including providing an opportunity for the parties to meet, if they have not already done so; equalizing any perceived imbalance in power between the parties with the presence of a Board member mediator; providing an opportunity for parties to better understand the other parties' position, the dispute and the matters in issue; providing an opportunity for the parties to reduce hostilities, particularly when there must be an ongoing relationship; providing an opportunity to address underlying interests that may not necessarily be reliant on the matters directly in issue; providing an opportunity to reduce the length of the hearing by resolving procedural or substantive issues; or, ultimately, resolving the matter in its entirety.

Parties in a mediation will be identified by the Board, based on the Board's understanding of the matters to be dealt with and the number of parties and the ability of the mediator to integrate all parties into the mediation.

A party may attend a mediation session with a representative or counsel or alone. Counsel or a representative may attend a mediation without a party if they have full authority to do so and to enter into a settlement.

If a settlement is reached and an order of the Board is required, the Board mediator may either hold a hearing with the consent of all parties; or schedule a hearing with another Board member so that the Board can consider the public interest and the requirements of the governing legislation, before issuing an order.

66. **Mediation** The Board may direct parties to participate in a mediation, either of its own accord or at the request of the parties or a party, and the mediation may be held in person or by electronic conferencing. The Board will direct how notice of the mediation will be given, depending on the circumstances.

67. **Procedure at a Mediation** The Board will appoint a mediator who will be a member of the Board or other neutral third party, and the mediator may make use of any appropriate dispute resolution process to help the parties resolve the issues in dispute. At or before the mediation, the Board will advise the parties of the process to be used, the safeguards provided, the responsibilities of each of the parties and the potential benefits of the process.

68. **Partial Resolution and Mediation Report** If the parties do not settle the matter in its entirety, the mediator may either:

(a) assist the parties to reach agreement on a statement of matters no longer in issue and matters still in issue. With the consent of the parties, this statement may be included in a Mediation Report which will be distributed to the parties and placed on the file for the information of the Board panel conducting the hearing on the remaining issues.

(b) Subject to Rule 71, the Board may issue an order of the Board addressing any partial settlement of the issues.

69. **Member to Preside at Hearing Only with Parties' Consent** A Board Member who conducts a mediation in which one or more of the issues were not resolved may not preside at the hearing of those unresolved issues unless all of the parties consent and the Board member agrees.

70. **Mediation or Settlement Discussions Confidential** The details of proceedings during a mediation are confidential. Any information or documents provided or exchanged during the mediation, and any suggestion for resolution of the issues or offer to settle made during a mediation shall

remain confidential and cannot be disclosed in evidence in the same or other proceeding, nor be placed on the Board file, without the party providing the information or document, or making the suggestion or offer, consenting to such disclosure and to the manner of such disclosure.

A mediator's notes shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. A mediator is not competent or compellable in any proceeding to give evidence regarding the discussions.

71. Hearing to Examine Settlement Where a whole or partial settlement of the issues is reached by the parties, and the parties require an order of the Board, the Board mediator may either hold a hearing at the time of the settlement, provided all parties consent to the hearing, and the Board agrees and is satisfied that sufficient notice of the matter has been given; or the Board may schedule a hearing, with appropriate notice, for the same or another Board panel. In each case the Board may rule on the settlement and issue an order in respect to the settlement after considering the public interest and the requirements of the governing legislation.

72. Hearing Priority to Mediated Matters When setting hearing dates, the Board may give priority to matters that have been mediated.

PREHEARING CONFERENCES

Comments on Prehearings (Rules 73 to 82 below):
There can be at least three types of activities at a prehearing conference, as may be seen from the subjects which may be considered (see Rule 73 below). These are: a settlement conference (which is similar to a mediation), a discussion of procedure for the hearing, and a preliminary hearing (for motions, etc.). There may be no clear division between these procedures, and the Board may switch from one to another whenever it seems appropriate.

Before a prehearing conference, the Board may send the parties a sample Procedural Order (a copy follows these Rules in the Attachments). The parties are expected to study the contents of this sample, and to meet if possible, and to come to the prehearing conference prepared to discuss the issues and procedures dealt with in the sample order. Following the prehearing, the Board will issue a formal order governing the procedure and issues for the hearing, based on the discussion of the contents of the sample order at the prehearing. The Board Member(s) conducting the later hearing must follow the order, unless a party convinces the Member that it is appropriate to change the order.

If the Board hears some evidence and/or submissions on the issues in a preliminary hearing mode at the prehearing, and decides that it can dispose of some or all of them, it will make formal decisions about the issues (given either during the prehearing or at a later date). These will be set out in the written order following the prehearing, and this is a final order on those issues.

Note that the prehearing Member will not necessarily conduct the hearing. It is usually desirable that this Member preside at the hearing to ensure continuity. A Member may state this at the prehearing (it is often stated as "This Member is seized".) However, in order to ensure speedy hearings, the Board may assign another Member or Members where the prehearing Member is not available for an early hearing.

73. **Prehearing Conference** At the request of a party or on its own initiative, the Board may direct parties to participate in a prehearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

(a) identify and simplify the issues;
(b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
(c) obtain admissions that may simplify the hearing;
(d) provide directions for prefiling of witness lists, expert statements and reports; for meetings of experts; and for further disclosure where necessary;
(e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
(f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
(g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public, or to seal documents; and
(h) deal with any other matter that may assist in a fair and quick resolution.

74. **Sample Procedural Order and Meeting Before Prehearing Conference** The Board may provide a sample Procedural Order to the parties before the prehearing conference. *(The sample Procedural Order is in the Attachments to these Rules).* Whether or not a sample is sent, the parties should meet before the prehearing conference to consider the matters set out in Rule 73, and prepare to make recommendations for the conduct of the hearing to the Board at the prehearing conference. The Board may order that the parties meet before the conference for this purpose.

75. **Serving Notice of a Prehearing Conference** The Board will give the applicant a Notice of Prehearing Conference which provides the time and place of the prehearing conference. The applicant must serve this on *(deliver it to)* those persons entitled to notice of the conference, and provide an affidavit to the Board proving the service at the conference. *(See Rule 35 for the form of affidavit.)*

76. **Board Member Presides** The Chair will designate a Member to conduct the prehearing conference.

77. **Public Attendance at Prehearing** A prehearing conference held in person will be open to the public, and one held by electronic conferencing will be open to the public where practical.

78. Conversion from One Procedure to Another The Board Member conducting a prehearing may conduct a procedural discussion, settlement conference or a preliminary hearing at any time, and may convert from one to another form. The Board will state in the notice of prehearing that the parties should arrive prepared for a procedural and settlement conference as well as a preliminary hearing where evidence or formal statements are heard. **Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.**

79. Results of Failure to Attend a Prehearing Conference If a party fails to attend the prehearing conference in person or by authorized representative, the Board may proceed without that party. They are not entitled to notice of future proceedings in the matter. *(unless the Board accepts their excuse for not attending as a reasonable one.)*

80. Preliminary Hearing Following Settlement Conference If the Board is satisfied that a party reasonably objects to the same Member presiding at a preliminary hearing portion of a prehearing conference after conducting a settlement conference, the Board may set a later date for a preliminary hearing before another Member.

81. Board Order Following Prehearing The Member conducting the prehearing conference will issue an order which may decide any of the matters considered at the conference, as well as provide procedural directions for any proceedings to follow.

82. Hearing Member Bound The Member conducting the hearing is bound by the order resulting from the prehearing conference, unless the Member is satisfied that there is good reason to vary the order.

METHODS OF HOLDING HEARING EVENTS

Comment on In Person, Electronic or Written Hearings (Rules 83 to 92 below):
The Board may hold hearing events or any part of a hearing event in person (orally), electronically or in written form. Written hearings can be held unless a party "satisfies the tribunal that there a good reason for not doing so" [section 5.1(2) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22 ("SPPA"), as enacted as Schedule B of the Red Tape Reduction Act, 1999, S.O. 1999, c. 12].

ELECTRONIC HEARINGS

Comments on Telephone Conference Calls or Videoconferences (Rules 83 to 86 below):
A hearing event by telephone conference or videoconference will generally be arranged by the Board. Notice is sent out by the Board or as directed by the Board. The process is difficult if lengthy documents are involved, and there will usually be a direction to file documents of over 10 pages before the conference. Cellular telephones must not be used for a telephone conference call because of connection difficulties. For videoconferencing, a full view of the participants will be arranged where possible.

83. Hearing Events by Teleconference or Videoconference The Board may hold a hearing event by teleconference or videoconference or other automated means for the determination of any issue.

84. Factors the Board May Consider The Board may consider any relevant factors in deciding to hold a hearing event by automated means, such as,
(a) the convenience to the parties and the Board;
(b) the likelihood of the process being less costly, faster and more efficient;
(c) whether it is a fair and accessible process for the parties;
(d) the effect on public accessibility to the Board's process;
(e) whether the evidence or legal issues are suitable for an automated format; or
(f) whether credibility may be an issue.

85. Protection for the Process The Board may direct the arrangements for the electronic hearing to protect the integrity of the hearing process, including the security and confidentiality of evidence, and will not permit a party or participant to take part in a teleconference while using a cellular telephone.

86. Videoconferences All participants in videoconferences and all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.

WRITTEN HEARINGS

Comments on Written Exchange of Evidence and Submissions (Rules 87 to 91 below): *The Board may hold written hearings, but cannot do so if a party satisfies the Board that there is a good reason for not doing so. If this occurs, the hearing must be either electronic or in person. Written hearings will be held only if there are few parties and issues, or on simple motions.*

87. Power to Hold Hearing Events by Written Submissions The Board may conduct the whole or any part of a hearing event in writing, unless a party satisfies the Board that there is good reason for not doing so. The objection must be filed within 10 days of the date of the Board's notice of written hearing. Notice of a written hearing will be sent only to the known parties.

88. Factors Board May Consider In deciding whether to hold a written hearing, the Board may consider any relevant factors, such as,
(a) the fairness and convenience to the parties;
(b) the likelihood of the process being less costly, faster and more efficient;
(c) the effect on public access to the Board's process;
(d) whether facts and evidence may be agreed upon;
(e) whether most of the issues are legal issues; and
(f) whether oral testimony is likely to be necessary.

89. How to Object A party who objects to a written hearing shall file and provide a copy to the other parties, a written objection providing details of its claim that there is a good reason for not holding the hearing event in written form, within 10 days of the date of the notice of written hearing.

90. Procedure for Exchange of Documents in Written Hearings If no notice of objection is received, the applicant shall provide to the Board and the other parties copies of its affidavit(s) *[see Rule 91]* and submissions within 30 days after the date of the Board's notice of the written hearing. The submissions shall include the reasons for the proceeding and the order requested, and any law relied on. The affidavit shall include the facts relied on and the evidence supporting the facts.

The other parties wishing to respond to the submissions shall do so by copy to all parties and the Board within 20 days of the date that the applicant's affidavit and submissions were served. The reply shall include an affidavit of evidence and submissions, and state if that party has no submissions or evidence on any of the issues raised, if this is the case.

The applicant may reply to the other parties' responses with a copy to the Board within 10 days after the date for service of the responses, and the reply shall be limited to any new evidence in the responses.

91. Requirement that Evidence be Sworn or Affirmed Evidence in a written hearing must be by affidavit, and any documents filed shall be attached to an affidavit of a person having personal knowledge of the document. The Board may permit evidence to be filed in a different form or in electronic form as approved by the Board upon request.

CONDUCT OF PROCEEDINGS

92. Hearings to be Public All Board hearing events will be open to the public except where the Board Member determines that this is not possible or practical, such as mediations or some electronic or written hearings, or that a matter should be heard in the absence of the public.

93. Procedure at a Hearing The Board may by order fix the procedure at a hearing event unless an Act provides differently. *(See Rule 82 for procedure following prehearing conferences.)*

94. Media Coverage - Photographic, Audio or Video Recording Photographic, audio or video recording of a proceeding that is open to the public will be permitted only on conditions which the Board considers appropriate.

95. Request to Record Proceeding A person wishing to make a photographic, audio or video recording of a proceeding must ask for authorization from the Chair as soon as possible after notice of the proceeding; from the presiding Member at the beginning of the proceeding; or as the issue arises. The parties will be given the opportunity to comment on the request, and if the Board approves it, to make a request to vary the permission at any time. In evaluating the request, the Board will consider, among other issues,

(a) whether the proceedings will be disturbed or disrupted;
(b) any undue discomfort for any participant; and
(c) any public interest in having proceedings accessible to all those affected or interested.

96. Conditions of Approval The Board may approve recording on conditions, and the following conditions shall always apply to any approval :

(a) only equipment which does not produce a distracting noise or light may be used, and it must be placed in one location approved by the Board;

(b) a person recording shall not move about the hearing room while the proceeding is going on; and
(c) the activity authorized will occur only within the times and portions of the proceeding determined by the Board.

97. **Withdrawal of Approval** The Board may withdraw permission to record temporarily or permanently if the conditions are not met; if any of the factors in Rule 95 become relevant; or if the Board in the circumstances cannot conduct a full and fair hearing.

98. **Types of Recording Usually Permitted Without Prior Approval**
(Effective March 1, 2003)

(a) Any party may arrange for the attendance of a qualified verbatim reporter at his or her own expense for the purpose of recording all testimony and submissions during a proceeding.

(b) Before a qualified verbatim reporter is permitted to record only part of a proceeding, the party retaining the qualified verbatim reporter must obtain the consent of the Board. In considering whether to provide its consent, the Board will consider, among other matters, whether to permit a record of only part of the proceedings would result in prejudice to a party.

(c) If a party orders a transcript or partial transcript, the party must notify the Board, and the other parties to the proceedings, that it has done so, and the Board shall receive a copy free of charge, if the Board requests a copy. The party must furnish the copy of the transcript to the Board within three days of the date of the party's receipt of the transcript.

(d) The Board may at its own expense and, on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the parties, however, in any such case the Board will advise the parties that it has ordered the transcript and where the Board orders a partial transcript the Board shall notify the parties as to the part of the transcript the Board has ordered.

COSTS ***(Effective March 1, 2003)***

Comments on Costs (Rules 99 to 107 below):

Costs are a sum of money ordered to be paid from one party to another party in order to cover only this party's expenses incurred for preparation and attending the proceeding. This may include such things as preparation and hearing time for counsel, consultant and witness fees, and travel expenses. It does not include business or personal financial losses. If the party's conduct caused such losses, however, this conduct may be included in considering a cost order.

A costs order may be made if a party requests it, although the Board may inform parties of this option if one party has in the Board's opinion acted inappropriately, as in Rule 106. Such orders and the amount awarded are to discourage conduct that wastes a great deal of the Board's and parties' time as well as other resources. Note that for matters under the Expropriations Act, costs are awarded only as provided in that Act.

An order for costs is very rare. Recovery of costs is not standard as in court proceedings. It is only where the Board finds that a party wrongly brought the appeal or participated unacceptably in preparation or hearing events, that an award of cost will be made. Only a party may make a request for costs. Participants, witnesses or others without official party standing can request or receive costs only in the most unusual circumstances.

THERE MUST BE NO THREATS TO POTENTIAL APPELLANTS THAT COSTS WILL BE REQUESTED. This could prevent opponents who have different but sincerely held opinions from exercising their right to appeal. The governing legislation provides this appeal right. If this is abused there are other remedies available, such as dismissal without a hearing.
*The Board has traditionally used a test for "**clearly unreasonable**" conduct which was described in this way: "...would a reasonable person, having looked at all of the circumstances of the case, the conduct or course of conduct of a party proven at the hearing and the extent of his or her familiarity with the Board's procedure, exclaim, "that's not right; that's not fair; that person ought to be obligated to another in some way for that kind of conduct." See Rule 106 for some examples.*

RULES 99 – 107 – COSTS

99. **Who May Request an Order for Costs** Where a party believes that another party has acted clearly unreasonably, frivolously, vexatiously or in bad faith considering all of the circumstances, it may ask for an award of costs. Unless the request for costs is made before the Board renders its decision at the end of the hearing event, the party must notify the Board within ten days after the written reasons are issued that the party will be seeking costs, against whom the costs are sought, and an indication of the approximate amount of costs being sought.

100. **Disposition of Request where Request made before issue of Written Decision**

If the request for costs is made before the Board renders its decision at the end of the hearing event, the Board may:

(a) make an order under Rule 105 on the basis of oral submissions made at the hearing event; or;

(b) direct that the request be considered at a later date in the manner directed by the Board.

100.1 **Disposition of Request where Request made after Issue of Decision**

If the request for costs is made within ten days after the written reasons are issued, or if the Board directs at the hearing that the request for costs is to be considered at a later date, the Board may direct the party or parties requesting costs to:

(i) attend before the Board, on notice to the party or parties against whom costs are sought, on a date fixed by the Board, and make oral submissions with respect to the application for costs provided that the party or parties against whom costs are sought shall also be permitted to make oral submissions with respect to the application for costs;

or

(ii) within thirty five days of the Board's direction, file written submissions on the application for costs and serve each party against whom costs are sought, provided that, in addition to any other document the Board directs be provided, the documentation shall include:

(a) the reasons for the request and the amount requested;

(b) an estimate of any extra preparation or hearing time caused by the alleged misconduct;

(c) copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and

(d) an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question;

or

(iii) within thirty five-days of the Board's direction, file and serve a notice of motion for costs in accordance with the Board's Rules of Practice and Procedure. A motion for costs shall proceed as an oral or electronic hearing as directed by the Board. If the Board directs a party to bring a motion for costs the notice of motion must contain the following information, in addition to such other information that the Board directs:

(a) the reasons for the request and the amount requested;

(b) an estimate of any extra preparation or hearing time caused by the alleged misconduct;

(c) copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and

(d) an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question.

101. Response by Other Party Where the Board directs a proceeding in writing in accordance with Rule 100.1, the party or parties against whom the motion is made shall provide a written response to the Board and the other parties to whom the request for costs relates within fifteen days of service of the documentation from the party requesting costs.

102. Reply by Party Seeking Costs Where the Board directs a proceeding in writing in accordance with Rule 100.1, the party requesting costs may provide to the Board and other parties to whom the request for costs relates a reply to a written response within 10 days of the service of the response.

103. Member Seized to Consider Costs Order The Member who conducted the hearing on the merits will make the decision on the request for costs. If that Member is, for any reason, unable to hear the motion, the Chair will direct another Member to hear the motion.

104. Period Eligible for Costs Order The Board may make a costs award for conduct at any time during a proceeding.

105. Powers of Board The Board may deny or grant the request or award a different amount.

106. Circumstances in which Costs Order May be Made Clearly unreasonable, frivolous, vexatious or bad faith conduct can include, but is not limited, to:

(a) failing to attend a hearing event or to sending a representative when properly given notice, without contacting the Board;

(b) failing to give notice or adequate explanation or lack of co-operation during prehearing proceedings, changing a position without notice, or introducing an issue or evidence not previously mentioned;

(c) failing to act in a timely manner or to comply with a procedural order or direction of the Board where the result was undue prejudice or delay;

(d) conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;

(e) failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Board has determined to be improper;

(f) failing to make reasonable efforts to combine submissions with parties of similar interest;

(g) acting disrespectfully or maligning the character of another party; and

(h) knowingly presenting false or misleading evidence.

The Board will consider the seriousness of the misconduct. If a party requesting costs has also conducted itself in an unreasonable manner, the Board may decide to reduce the amount awarded. *(The Board will not consider factors arising out of a mediation or settlement conference except where, for example, it finds that a request for change to a settlement is unreasonable.)*

107. **Interest on Award** Awards of costs will bear interest in the same manner as those made under section 129 of the *Courts of Justice Act*.

BOARD DECISIONS AND ORDERS

***Comment on Conditions Imposed**: Any conditions imposed in a decision must be fulfilled within a reasonable time. If not, the Board may reopen the hearing to determine whether to change its decision.*

108. **Issuing a Board Decision or Order** A Board order may be contained in the decision, and issue as a Decision and Order of the Board. Where the order issues after the written decision *(such as where conditions have been imposed which must be met before final approval)*, the Board Secretary will issue the appropriate order as directed by the Board.

109. **Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

CORRECTING MINOR ERRORS IN DECISIONS AND ORDERS

***Comments on Minor Changes to Decisions and Orders (Rules 110 and 111 below):** The Board may correct a minor error in a decision or order, such as typing errors, incorrect figures or the language used, if needed. Such a correction does not change the decision reached by the Board Member(s). Any request should be sent to the Board Member(s) who made the decision. The Board may also do this without notice or a request. Corrections will be sent to all the parties. If a different type of error is claimed, see Rule 112 and following.*

110. **Correcting Minor Errors** The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order, and may clarify a misstatement, ambiguity or other similar problem. There is no fee if a party requests this type of correction.

111. **Processing Request as a Review Request** If a party requests a correction or clarification that in the Board's opinion is a request for a substantive change in the decision or order, the Board will treat it as a request for review under Rule 112.

REVIEW OF A BOARD DECISION OR ORDER

Comments on Reviews and Rehearings (Rules 112 to 118 below):
There is a process for review of the findings in the decision. It is a three-step procedure:

1. *The Board must be convinced from the affidavit submitted that it is possible that there was an error in the original decision or process. Review requests will not be successful if they merely attempt to provide the same evidence or reargue the matter. No notice is given to the other parties at this stage, because there is no need for a response from them at this time. The Board discourages the parties from spending extra time and money in responding when the majority of requests are refused after initial review.*
2. *If it appears that there might have been an error in the decision or part of it, the Board may hear a motion (oral or electronic) where all parties argue the question.*
3. *If the Member hearing the motion decides that the claim of error is correct, either the decision is corrected, or if the Member so decides, the matter is reheard. The rehearing may follow right after the motion hearing, or at a later date. If the Board decides that the rehearing will take place immediately, this will be stated in the Notice of Motion supplied by the Board to the requester, and the requester then serves the other parties.*

***NOTE** that the Board rarely changes a final decision, and requires very good reasons for doing this. It will not review a decision if in its view the basic conclusions will not change even though there is an error in the decision. Therefore the second stage, the hearing of a motion, is not often reached.*

It will also not consider a review (except in special circumstances) where the party has made application for leave to appeal or for judicial review to a court.

If the reason for the request is "new evidence", the evidence must not have been available at the time of the hearing; it must be credible, and material to the original result; the requester must act quickly upon becoming aware of it; and the prejudice to the requester must be far greater than the other parties' right to a final decision.

112. **Board's Powers on Review** The Board may rehear any application before deciding it or may review, rescind, change, alter or vary any decision, approval or order. It may order a rehearing of the whole or part of the matter before a different Member.

113. **Request for Review of Board Decision** The Board may consider a party's request to review all or part of a decision if the party submits the information and materials set out in Rule 114. A request for review does not automatically stay the effect of the original decision, unless the requester asks the Board to make this order and the Board does so.

114. **Contents of a Request** The person making the request shall file notice of it with the Chair of the Board **within 30 days** of the date of the Board written decision (except in the case of new evidence unavailable at the hearing) and shall include,

(a) the requester's full name, address, telephone and fax number and e-mail address (if any);
(b) the full name, address, telephone and fax number and e-mail address (if any) of the requester's representative (if any);
(c) the requester's or representative's signature;
(d) brief reasons for the request;

(e) the desired result;
(f) any documents that support the request, including copies of new evidence that was unavailable at the hearing [see Rule 115(e)];
(g) whether the requester has or will submit an application for leave to appeal or for judicial review to the court;
(h) a filing fee (now $125.00) (cheque or money order payable to the Minister of Finance); and
(i) an affidavit stating the facts relied upon in support of the request.

115. Reasons for Review The Board will hear a motion to review a decision only if the reasons provided in the request raise an arguable case that the Board,
(a) acted outside its jurisdiction;
(b) violated the rules of natural justice or procedural fairness, including those against bias;
(c) made an error of law or fact such that the Board would likely have reached a different decision;
(d) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and could have affected the result; or
(e) should consider evidence which was not available at the time of the hearing, but that is credible and could have affected the result.

116. Initial Refusal The Board will refuse the motion if,
(a) the request is made by a non-party;
(b) the request is filed later than 30 days after the Board decision issues, unless the Board determines that there is good reason to extend this time;
(c) the requester does not supply all of the information and materials required in Rule 114 within 21 days of the Board's notice; or
(d) it is a second request by the same party. The Board will not respond to correspondence raising the same or similar issues.

117. Procedure on Review Request The Board will determine initially whether the request has met one or more of the eligible grounds for such a review, **without providing notice to the other parties**. The Board may grant a motion request without submissions from other parties. If it is satisfied that a motion to decide whether to review should be heard, the Board will inform the requester of a date for the motion. The requester must serve notice of the motion and any supporting material on the other parties who attended the hearing at least 30 days before the date set for the motion, unless the Board directs otherwise. Rules 36 and 37 requiring written responses also apply to this motion.

118. Procedure on Motion The motion for review must follow the general procedure for motions as set out in Rule 34 and following, except that the Notice of Motion must be served at least 30 days before the date set for the motion unless the Board directs otherwise. The motion will generally be heard by a different Member than the one who made the original decision, unless the request is based on new facts. At the hearing of the motion, the parties will be expected to make submissions on whether the request meets the Board's reasons for review in Rule 115.

PART II - ASSESSMENT APPEALS

Comments on Assessment Appeals (Rules 119 to 121 below):
There is no longer any right to appeal an assessment matter from the Assessment Review Board to the Ontario Municipal Board. Appeals were available only where the ARB held a hearing on a complaint before January 1, 1998. The Rules below are included because there are some assessment appeals that have not yet been resolved, as they are awaiting settlement or court decisions.

119. **Application of Part** This Part applies to proceedings under the *Assessment Act*. In all other respects, such appeals are subject to the other requirements of these Rules.

120. **Special Notice of Higher Assessment** If a party intends to request a higher assessment than that fixed by the Assessment Review Board, it must give notice of its intention to all other parties and the Board, and include the amount of the assessment requested. This must be given at least 25 days before the hearing of the appeal, unless otherwise directed by the Board. An affidavit proving service must be filed with the Board at the hearing. If this notice of higher assessment is not served, the Board may refuse to consider the request.

121. **Minutes of Settlement in Assessment Appeals** Minutes of Settlement in assessment matters must be signed by all the parties, unless concluded at a hearing of which notice was given to all parties and a party failed to appear. In this case it is not necessary to obtain the signature of the party who did not appear. Minutes of Settlement must contain the following, if applicable:

(a) name of appellant;
(b) roll number(s);
(c) municipal address(es);
(d) taxation year(s), including commencement dates for appeals under sections 33 or 34 of the *(former)Assessment Act*;
(e) realty assessment, business assessment and business percentage for each roll number and taxation year dealt with in the settlement;
(f) where a supplementary assessment, the total assessment and a breakdown (if necessary) of the conversion, improvement increase, and so on;
(g) changes (other than the amount) which the parties wish the Board to order, including items previously decided by the Assessment Review Board; and
(h) a statement that the parties certify that the contents related wholly to matters that are properly before the Board, and contain all the information that should be in the Board's order.

If the Minutes deal with more than one roll number, the information should be shown in column format on 8 1/2 " by 11" paper, with the roll numbers on the left and other information in columns to the right, and be attached to the settlement. If the roll numbers relate to the same municipal address, this should be stated in the attachment.

PART III - EXPROPRIATIONS

Comment on Forms for Use in Expropriations (Rules 122 to 143 below):
Forms have been created by R.R.O. 1990, Reg. 363 for use in expropriation proceedings. These forms are available to unrepresented parties from the Board Secretary.

122. Application of Part This Part applies to proceedings under the *Expropriations Act*.

123. Definitions Definition of terms in this Part on Expropriations:
"Act" means the *Expropriations Act*;
"claimant" means an owner as defined in the Act;
"respondent" means a statutory authority as defined in the Act.

Comment on Statements and Responses under the Act:
Note that documents prepared for expropriation proceedings cannot be used for any other purpose.

124. Notice of Arbitration and Statement of Claim by Claimant A claimant seeking compensation shall serve a combined Notice of Arbitration and Statement of Claim on the respondent, and shall file with the Board proof of service of the Notice within 10 days of the date of service. The Notice and Statement must set out,
(a) the amount claimed;
(b) the basis upon which the amount is calculated; and
(c) the facts in support of each element of compensation claimed.

125. Reply to Notice of Arbitration The respondent shall serve a Reply on the claimant within 20 days after service of the Notice of Arbitration, and shall file with the Board a copy of the Reply and proof of service on the claimant.

126. Notice of Arbitration by Respondent Where a claimant has not served a Notice of Arbitration under Rule 124, the respondent may serve on the claimant a Notice of Arbitration, and shall file with the Board proof of service of the Notice within 10 days of the date of service.

127. Service of Statement of Claim for Compensation Where a Notice of Arbitration has been served by the respondent, the Board will not make an appointment for the hearing of the arbitration until the claimant has filed with the Board and served on the respondent a Statement of Claim for Compensation within the time required by the Board unless the Board decides otherwise upon request.

128. Service of Reply to Statement of Claim for Compensation Where a claimant has served a Statement of Claim for Compensation under Rule 127, the respondent shall serve a Reply within 20 days after being served with the Statement, and shall file with the Board a copy of the reply and proof of service on the claimant.

129. Denial to be Raised in Reply Where a respondent denies that a claimant is entitled to any compensation on the grounds,
(a) that the claimant has no interest in the land expropriated or injuriously affected;
(b) that no compensation is payable with respect to the interest of the claimant in such land; or
(c) that the claim is barred by a provision in the Act or any statute;
it must raise such denial in its reply, setting out the relevant facts and statutory provisions relied on. If this is not done, the respondent may not make such denial at the hearing of the arbitration, unless the Board permits it.

130. Forms An offer of compensation and acceptance of an offer of compensation made under section 25 of the Act may be in the Forms in R.R.O. 1990, Regulation 363. An acceptance may be served upon the person named in the offer of compensation to receive it.

131. General Rule for Service of Documents Service of documents may be made, in addition to the methods set out in subsection 1(2) of the Act,
(a) in the case of Her Majesty the Queen in right of the Province of Ontario, in the manner set out in section 10 of the *Proceedings Against the Crown Act*; and
(b) in the case of a municipal or other corporation, partnership or individual, on the persons prescribed by the Rules of Civil Procedure.

132. Required Pleadings The only pleadings required in an arbitration to determine compensation are a Statement of Claim and a Reply, or in the case of a matter under Rule 126, a Notice of Arbitration, a Statement of Claim for Compensation and a Reply, unless the Board orders otherwise.

133. Examination of Representative by Opposing Party A person appointed under section 37 of the Act to represent an owner of land may be examined by an opposing party in the place of the owner.

134. Discovery and Admissions - Applicability of Rules of Civil Procedure No Board order is required for examinations for discovery or documents. The Rules of Civil Procedure apply to proceedings under this Part unless the Board on motion orders otherwise. *(Note, however, that appraisal reports to be relied on must be served at least 15 days before the hearing.)*

Expropriation Prehearing Procedures

Comments on Expropriation Prehearing Procedures (Rules 135 to 142 below):
Note that the prehearing Member will not necessarily conduct the hearing. It is usually desirable that the Member also preside at the hearing to ensure continuity. A Member may inform the parties of this at the prehearing. However, in order to ensure speedy hearings, the Board may assign another Member or Members where the prehearing Member is not available.

135. Prehearing Conference A party may request and the Board may direct the parties to attend a prehearing conference, and the Rules governing such conferences apply.
(The sample Procedural Order for Land Compensation is available from the Board Secretary.)

136. Time for Hearing The Board may appoint a time for a hearing of the arbitration upon receipt of the notice of readiness for hearing, signed by or on behalf of all parties; or by an order following an oral or telephone motion *(notice of the motion cannot be served until 30 days after service of the Notice of Arbitration)* or a prehearing conference.

137. Motions Heard in Other Locations If the owner of land located outside of the City of Toronto consents, oral motions may be heard at the Board's offices in Toronto, or in any municipality reasonably close to where the lands are located.

138. Notice of Hearing The Board Secretary will mail a notice of the time and place for the arbitration to the respondent.

138.1 *NOTE: Subsection 29 (2) of the Expropriations Act requires that all oral evidence submitted before the Board in proceedings under that Act be taken down in writing).* ***(Effective March 1, 2003)***

The expropriating authority shall arrange, at the expense of the expropriating authority, for the attendance of a qualified verbatim reporter to take down, in writing, all oral evidence submitted before the Board.

139. Service of Notice of Hearing Upon receipt of the Notice of Hearing, the respondent shall, at least 20 days before the hearing, serve a copy of the notice of hearing upon all registered owners, and also upon any person known to the respondent to be an owner as defined in the Act, or who is claiming to be entitled to any part of the compensation which may be awarded at an arbitration under the Act.

140. Notice for Expert Reports If the Rules of Civil Procedure specify a greater notice period for appraisal or other expert reports than under section 28(1) of the Act, the greater notice period applies.

141. Filing of Documents At the commencement of a hearing to determine compensation, the respondent shall file a copy of the certificate of approval of expropriation under the Act, the plan of the expropriated land and proof of its registration in accordance with section 9 of the Act, where applicable; and an affidavit proving service of the notice of hearing under Rule 139 and that the persons served are all the persons required to be served.

142. Settlement Offer If an offer to settle is made and it is not dealt with in the Act, the Rules of Civil Procedure apply.

143. Form of Expropriation Order An order issued under this Part shall be in the Form of Order in R.R.O. 1990, Regulation 363.

PART IV - RETAIL BUSINESS HOLIDAYS APPEALS

144. Application of Part This Part applies to proceedings under the *Retail Business Holidays Act* respecting the record to be forwarded to the Board. In all other respects, such appeals are subject to the other requirements of these Rules.

145. Forwarding of Record to Board The clerk of a municipality that has passed a by-law under section 4 of the *Retail Business Holidays Act* shall notify the Board of its passage. Upon receipt of a notice from the Board that an appeal has been filed, the Clerk shall compile a record that shall include,

1. a copy of the original application for a by-law;
2. a copy of the by-law certified by the clerk;
3. a plan or map of the area covered by the by-law, if it is not part of the by-law;

4. a list of the names and addresses of every person who made oral or written submissions at the public meeting held before the by-law was passed;
5. the original or a true copy of all written submissions and material in support received in respect of the by-law before it was passed; and
6. an affidavit or declaration duly sworn certifying that there has been compliance with the requirements for the giving of notice of the public meeting held before the by-law was passed.

The clerk shall deliver the record to the Secretary of the Board no later than 20 days after the last day for an appeal, and shall provide such other information or material as the Board may require in respect of the appeal.

PART V - APPLICATIONS FOR LEAVE TO APPEAL UNDER THE ENVIRONMENTAL BILL OF RIGHTS
(Effective March 1, 2003)

Planning Act and Aggregate Resources Act

Comments on Applications for Leave to Appeal under the Environmental Bill of Rights, 1993 (Rules 146 to 157 below):

Ontario residents may seek leave to appeal to the OMB from a decision whether or not to implement a proposal for certain "Class I and Class II instruments" when notice of the proposal to issue the instrument has been placed on the EBR registry under section 22 of the Environmental Bill of Rights, 1993.

Generally, applications for leave to appeal must be made within 15 days after the Minister gives notice of a decision on the proposal in the Environmental Registry established under the Environmental Bill of Rights ("EBR"). Please see Rules 10 to 12 respecting the computation of time.

There are, at present, three types of Class I instruments under the Planning Act and one type of Class I instrument under the Aggregate Resources Act. There is one type of Class II instrument under the Aggregate Resources Act.

The Class I instruments under the Planning Act relate to a proposal for the approval by the Minister of Municipal Affairs and Housing for:

1. *An Official Plan or an amendment to an Official Plan;*
2. *A consent to sever, BUT ONLY in an area where there is no Official Plan; and*
3. *a plan of subdivision under section 51 of the Planning Act, BUT ONLY in an area where there is no Official Plan.*

The Class I instrument under the Aggregate Resources Act relates to a proposal by the Minister of Natural Resources to revoke a licence under subsection 20 (1) of that Act, other than a proposal to revoke a licence for failure to pay an annual licence fee.

The Class II instrument under the Aggregate Resources Act relates to a proposal by the Minister of Natural Resources to issue a Class A or Class B licence described in subsection 7 (2) of that Act under subsection 11 (9) of that Act.

In the following rules, a "person who issued the instrument" means the Minister, and an "instrument holder", in the case of the Planning Act, means, either the person or municipality applying for the approval of the Official Plan, Official Plan amendment, or plan of subdivision" and in the case of the Aggregate Resources Act, means", in the case of a Class I instrument, "the person with respect to whom the proposal to revoke a licence relates", and in the case of a Class II instrument, "the person who applies for the licence".

The Environmental Bill of Rights creates a two-step process: first for leave to appeal, and, secondly, the appeal itself, if leave is granted. The leave application is, ordinarily, based on written submissions, and the Board's Rules for written hearings apply (except that no consent is required). There is no appeal from a decision whether or not to grant an application for leave to appeal.

The OMB cannot grant an application for leave to appeal unless it appears that:

(a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and

(b) the decision in respect of which an appeal is sought could result in significant harm to the environment.

In addition, the applicant must prove that it has "an interest in the decision" (generally, commenting on the proposal at an earlier stage is evidence of an interest) and that another person has a right under another Act to appeal from a decision whether or not to implement the proposal.

146. **Application of Part** This Part applies to applications for leave to appeal and appeal proceedings under the *Environmental Bill of Rights.*

147. **Leave Application by Written Hearing** The Rules for written hearings (Rules 87 to 91) apply to applications for leave to appeal to the Board under the *Environmental Bill of Rights, 1993, however no person can object to a written proceeding.* The Board has the discretion to proceed on a leave application by way of an oral or electronic hearing.

148. **Serving Notice of Application for Leave to Appeal** Before or on the same day as the leave application is filed with the Board, the applicant shall serve copies of the leave application on the instrument holder, the Environmental Commissioner of Ontario, and in the case of the *Planning Act*, on the Ministry of Municipal Affairs and Housing, Provincial Planning and Environmental Services Branch, and in the case of the *Aggregate Resources Act*, on the Director, Lands and Waters Branch, Ministry of Natural Resources and the person in the Ministry of Natural Resources identified under the heading "Issuing Authority" in the EBR Decision Notice. Documents may be served by personal service (including courier), registered mail, or by facsimile.

149. **Information Required on the Application for Leave** The application shall include:

(a) the Board's filing fee of $125.00 payable to the Minister of Finance delivered only to the Board;

(b) the applicant's interest in the decision and any facts to be taken into account when the Board decides whether the applicant has the necessary interest;

(c) the reason(s) why the Board should find that there is good reason to believe that no reasonable person, having regard to the relevant law and any government policies developed to guide such decisions, could have made the decision; and the reasons why the decision could result in significant harm to the environment;

(d) in cases under the *Planning Act* whether the applicant will make a concurrent appeal under the *Planning Act*

(e) in cases under the *Planning Act*, a copy of the Official Plan and/or amendment, consent to sever or plan of subdivision; and if not an entire Official Plan, a statement of the parts of the plan or amendment that are the subject of the leave application; and

(f) in cases under the *Aggregate Resources Act:*

where the leave application relates to a decision about the issuance of a licence:

a copy of the licence including any conditions, the application for the licence application, site plans and reports and a copy of the information described in 4.3.4 under the heading ""4.3 Resolution of Objections" in the document entitled "Aggregate Resources of Ontario, Provincial Standards, Version 1.0".

where the leave application relates to a decision about the revocation of a licence:

a copy of the Notice of Intention to Revoke and a copy of any Notice of Revocation.

150. **Board Consent If Additional Time Required** If the applicant is unable to file and serve all of the information and material required by Rules 148 and 149 with the application, the applicant must file the additional material within 5 days of the date of the application, unless the applicant provides reasons to the satisfaction of the Board to extend the time. In the case of applications to the Board for matters under the *Aggregate Resources Act,* where the applicant states that it is impossible for the applicant to file and serve 5 copies of the information and material required by Rules 148 and 149 because that information and material are not in the possession of the applicant and are in the possession of the Ministry of Natural Resources, the applicant shall request copies of the information and material from the Ministry of Natural Resources. If, upon the applicant's payment of fees to the Ministry of Natural

Resources for any necessary photocopying, the relevant number of copies of the information and material are not provided to the applicant within a reasonable time, the applicant may ask the Board to direct the Ministry of Natural Resources to provide copies of the information and material to the applicant to be filed by the applicant with the Board and served on the persons described in Rule 148.

151. **Evidence on Applications for Leave** Written evidence on leave applications does not need to be by affidavit unless the Board orders evidence by way of affidavit, however, the person submitting the evidence must also submit a written statement that the person affirms that the evidence and statements are true and the person must sign that statement. If factual disputes or issues of credibility arise from the written statements, the Board may convene an electronic or oral hearing, or direct that persons be cross-examined, under oath or affirmation, on their evidence.

152. **Response by Ministry and Instrument Holder** Promptly after service of the application for leave and any additional information, the Ministry of Municipal Affairs and Housing, or the Ministry of Natural Resources, as the case may be, and the instrument holder shall inform the Board and the applicant whether they intend to respond. The Ministry and the instrument holder, as applicable, must specify the date by which each response will be filed, and the person who will represent each on the application for leave.

153. **Delay in Filing Responses** The consent of the Board must be obtained in order the responding parties to file responses more than 10 days after all of the applicant's materials are filed. If the responding materials cannot be filed within 10 days, the Board will deem it impossible to make a decision on the application within 30 days after the application is filed.

154. **Reply by Applicant** If the Board is satisfied that a response raises new issues or evidence that the applicant for leave to appeal could not have anticipated, the Board will allow the applicant an opportunity to reply.

155. **Decision by the Board** If the Board determines that, because of unusual circumstances, more than 30 days are required before it can issue its decision on the application for leave, the Board will notify the applicant, the Environmental Commissioner, the Ministry of Municipal Affairs and Housing or the Ministry of Natural Resources, as the case may be, and other person who in the Board's opinion should receive notice.

156. **Where the Board Grants Leave** If leave to appeal is granted,

(a) leave may be granted in whole or in part and subject to any appropriate conditions;

(b) the Board may provide procedural directions for the hearing, and may add other parties or participants; and

(c) the Board's Directions will specify whether the hearing will be oral, electronic or in written format subject to the provisions of the *Statutory Powers Procedure Act*.

The Environmental Bill of Rights provides that the granting of leave to appeal a decision stays the operation of the decision until the disposition of the appeal, unless the appellate body that granted the leave orders otherwise.

157. **Procedure on Appeal** The appeal will be subject to the usual notice requirements and procedures for Official Plan amendments, consents to sever or plans of subdivision, or licences under the *Aggregate Resources Act*, as modified by any procedural direction under Rule 156, unless the hearing panel directs another procedure.

MARIE HUBBARD
CHAIR

JUNE 3, 2004

ATTACHMENTS TO THE RULES OF PROCEDURE

1. FORMS

Note: The following forms refer to sections of the Planning Act as of November 1, 1999.

Submission Forms for *Planning Act* and Other Matters

The following submission forms are available free of charge from the Board Secretary:

- official plan appeals under s. 17(24);
- appeal from a decision of an approval authority [17(36)] or failure of approval authority to make a decision within 90 days under s. 17(40);
- appeal from Council's refusal to adopt a requested amendment and other appeals under s. 22(7);
- appeal from Council's refusal or failure to amend a zoning by-law under ss. 34(11) and 36(3);
- zoning by-law appeal under ss. 34(19) and 38(4) (interim control);
- demolition permit appeals under ss. 33(4), 33(10) or 33(15);
- site plan referrals under s. 41(12);
- minor variance appeals under s. 45(12);
- appeal of plan of subdivision, failure of approval authority to make a decision within 90 days, under s. 51(34);
- other subdivision appeals under ss. 51(39), 51(43), or 51(48);
- consent appeals under ss. 53(14) and 53(19);
- development charge by-law appeals under s.14 of the *Development Charges Act, 1997*;
- development charge complaints under s. 22(1) of the *Development Charges Act, 1997*;
- education development charge by-law appeals under s. 257.65 of the *Education Act*;
- education development charge complaints under s. 257.87 of the *Education Act*.

2. SAMPLE PROCEDURAL ORDER

This is a sample of the Procedural Order that the Board issues for most matters (except expropriation) after holding a prehearing conference. For further explanations and meanings of the terms used, see the attachment to this sample order. Note that the Board expects that the terms of the procedural order when issued will be met. If a party has not complied with a requirement of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.

ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

This is an appeal (referral)...

OMB Case and File Number:

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on ……,…… (*year*) at …a.m./p.m. at .....in the municipality of ……[Optional:.. An evening session will be held on .....]

3. The length of the hearing will be about ……days.

4. The parties and participants identified at the prehearing conference (*see the Attachment for the meaning of these terms*) are: [Optional:...listed in Attachment 1 to this Order.]

5. The Issues are: [Optional:... set out in the Issues List attached as Attachment 2.] There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference.)* Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

[7]. [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.

[8]. [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least .....calendar days before the hearing.

9. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

[10.] [Optional] A [witness] [participant] must provide to the Board and the parties a [witness] [participant] statement at least ..... calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

12. On or before .....[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of .....

13. [Optional] On or before ..... , the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
(see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is [not] seized.

So orders the Board.

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties ***meet to discuss this sample Order before the prehearing conference*** *to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.*

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party *is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an* ***unincorporated group*** *wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.*

NOTE *that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.*

Participant *is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements.* ***NOTE*** *that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.*

Written and Visual Evidence: ***Written evidence*** *includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.* ***Visual evidence*** *includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.*

Witness Statements*: A* ***witness statement*** *is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely*

on at the hearing. An ***expert witness statement*** *should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A* ***participant statement*** *is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.*

Additional Information

Summons*: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 41 and 42 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

The order of examination of witnesses*: is usually direct examination, cross-examination and re-examination in the following way:*
direct examination by the party presenting the witness;
direct examination by any party of similar interest, in the manner determined by the Board;
cross-examination by parties of opposite interest;
re-examination by the party presenting the witness; or
another order of examination mutually agreed among the parties or directed by the Board.